IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Bail Appl..No. 7065 of 2007()

CRIME NO.171/2006 OF AREEKODE POLICE STATION

.....

: PETITIONER/ACCUSED

HAMZA, S/O KALATHINGAL KOLKKATTIL
VEERANKUTTY, KUZHIMANNA, KONDOTTY POLICE STATION LIMIT.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7065 of 2007

Dated this the 20th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 376 I.P.C. The victim, a nineteen year old girl was allegedly raped by the petitioner. Investigation is complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The case is now pending as L.P.No.39/07 before the Committal Court.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Totally false and vexatious allegations are being raised by the victim against the petitioner. The petitioner is not absconding. He is employed abroad. In these circumstances, directions under Section 438 Cr.P.C may be issued in his favour, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner must resort to the ordinary and normal course of appearing before the court and seek regular bail.

4. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for

that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007